

ESTTA Tracking number: **ESTTA511391**

Filing date: **12/17/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Blackbaud, Inc.
Granted to Date of previous extension	12/15/2012
Address	2000 DANIEL ISLAND DRIVE Charleston, SC 29492-7541 UNITED STATES
Attorney information	Christopher L. Sorey Wyrick Robbins Yates & Ponton, LLP 4101 Lake Boone Trail Suite 300 Raleigh, NC 27607 UNITED STATES ip@wyrick.com Phone:919-781-4000

### Applicant Information

Application No	85451577	Publication date	10/16/2012
Opposition Filing Date	12/17/2012	Opposition Period Ends	12/15/2012
Applicant	Dilbeck, Mike 3105 North Ashland Avenue, Suite 107 Chicago, IL 60657 UNITED STATES		


### Goods/Services Affected by Opposition

Class 009. First Use: 2011/09/15 First Use In Commerce: 2011/09/15 All goods and services in the class are opposed, namely: Digital materials, namely, DVDs, downloadable audio files and downloadable video files featuring the subject of empowering individuals to live an extraordinary life and to take opportunities/actions to make a difference for other people, organizations and issues by using values as their moral compass
Class 016. First Use: 2011/09/15 First Use In Commerce: 2011/09/15 All goods and services in the class are opposed, namely: A series of books, written articles, handouts and worksheets in the field of empowering individuals to live an extraordinary life and to take opportunities/actions to make a difference for other people, organizations and issues by using values as their moral compass
Class 041. First Use: 2011/09/15 First Use In Commerce: 2011/09/15 All goods and services in the class are opposed, namely: Educational and entertainment services, namely, providing motivational speaking services in the field of empowering individuals to live an extraordinary life and to take opportunities/actions to make a difference for other people, organizations and issues by using values as their moral compass

### Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

### Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85660383	Application Date	06/25/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EVERYDAY HERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: Application service provider (ASP) featuring non-downloadable software for use by others that will allow users to build customized websites for the purpose of fundraising for non-profits		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	EVERYDAY HERO		
Goods/Services	fundraising software and technologies for charities; and online fundraising support services for charitable organizations and other related services and goods		

Attachments	85660383#TMSN.jpeg ( 1 page )( bytes ) DOCS-#760309-v1-Notice_of_Opposition_-_EVERY_DAY_HERO.pdf ( 4 pages )(72349 bytes )
-------------	---

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/CLS/
Name	Christopher L. Sorey
Date	12/17/2012



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/451,577: EVERY|DAY HERO  
Published in the Official Gazette of October 16, 2012

Blackbaud, Inc.,	)	
	)	
Opposer,	)	
	)	
v.	)	
	)	Opposition No. _____
Mike Dilbeck, an individual,	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

Opposer, Blackbaud, Inc., a Delaware Corporation, with a business address of 2000 Daniel Island Drive, Charleston, South Carolina 29492-7541 believes that it will be damaged by the registration of the Application Serial No. 85/451,577 and hereby opposes registration of the mark EVERY|DAY HERO. The instant application was published in the October 12, 2012 Edition of the U.S. Patent & Trademark Office's (PTO) Official Gazette. Opposer respectfully requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, Blackbaud, Inc. is one of the leading suppliers of software products specifically designed for charities, schools, universities, and other not-for-profit organizations. Its software products focus on fundraising, financial management, ticket sales, education administration, and web site management.

2. On October 19, 2011, Applicant, Mike Dilbeck, filed an application for EVERY|DAY HERO, Serial No. 85/451,577 on a Section 1(a) basis, claiming use in interstate commerce since September 15, 2011 of the mark in connection with the following goods and services:

"Digital materials, namely, DVDs, downloadable audio files and downloadable video files featuring

the subject of empowering individuals to live an extraordinary life and to take opportunities/actions to make a difference for other people, organizations and issues by using values as their moral compass in Class 9;

A series of books, written articles, handouts and worksheets in the field of empowering individuals to live an extraordinary life and to take opportunities/actions to make a difference for other people, organizations and issues by using values as their moral compass in Class 16; and

Educational and entertainment services, namely, providing motivational speaking services in the field of empowering individuals to live an extraordinary life and to take opportunities/actions to make a difference for other people, organizations and issues by using values as their moral compass in Class 41.”

3. Opposer, on its own and through subsidiaries and predecessors in interest has used the EVERYDAY HERO mark on the Internet, abroad and in interstate commerce since as early as July 29, 2007.

4. Opposer is the Applicant of record for the mark EVERYDAY HERO contained in Application Serial No. 85/660,383 which covers application service provider (ASP) featuring non-downloadable software for use by others that will allow users to build customized websites for the purpose of fundraising for non-profits in Class 42.

5. Opposer has used and claims common law rights in United States to its EVERYDAY HERO mark in connection with fundraising software and technologies for charities; and Online fundraising support services for charitable organizations and other related services and goods.

6. Applicant’s mark is identical to Opposer’s EVERYDAY HERO mark.

7. Applicant’s goods and services are identical and related to those offered by Opposer under its EVERYDAY HERO mark.

8. Applicant's mark, contained in Application Serial No. 85/451,577, is confusingly similar to Opposer's mark.

9. Applicant's registration of the EVERY|DAY HERO trademark would cause consumer confusion as to the source, affiliation and sponsorship of the goods and services and a create presumption that the goods and services emanate from Opposer or its subsidiaries and licensees.

10. Opposer believes that registration of the mark shown in the opposed application will result in damage to Opposer under the provisions of Section 2(d) of the U.S. Trademark Act, 15 U.S.C. §1052(a) pursuant to the allegations above.

**WHEREFORE**, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted this 17<sup>th</sup> day of December, 2012.

/CLS/  
Christopher L. Sorey  
WYRICK ROBBINS YATES & PONTON, LLP  
4101 Lake Boone Trail, Suite 300  
Raleigh, North Carolina 27607  
Telephone: (919) 781-4000  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing Notice of Opposition was served on this 17th day of December, 2012, via First Class Mail, postage prepaid, upon Applicant's Correspondent of Record:

HARRIS, HARRIS & GILBERT, L.L.C.  
206 N HOLDEN ST  
WARRENSBURG, MISSOURI 64093-1709

\_\_\_\_\_  
/CLS/

Christopher L. Sorey